

WITHDRAWAL OF CONTEST—SIXTH OHIO DISTRICT

LETTER FROM THE CLERK OF THE HOUSE OF REPRESENTATIVES,
TRANSMITTING A NOTICE OF WITHDRAWAL IN THE ELECTION
CONTEST OF NOVEMBER 8, 1938, BY EMORY F. SMITH, WHO ASKS
THAT HIS PETITION BE DISMISSED

MARCH 15, 1939.—Referred to the Committee on Elections No. 3, and ordered to
be printed

HOUSE OF REPRESENTATIVES,
OFFICE OF THE CLERK,
Washington, D. C., March 15, 1939.

The SPEAKER, HOUSE OF REPRESENTATIVES,
Washington, D. C.

SIR: I have the honor to inform the House of Representatives that in the Sixth Congressional District of the State of Ohio, at the election held November 8, 1938, Hon. James G. Polk was certified as having been duly elected as Representative in the Seventy-sixth Congress and his certificate of election in due form of law was filed in this office. His right to the seat was questioned by another candidate, Hon. Emory F. Smith, who served notice upon the returned Member of his purpose to contest the election. During the time allowed by law for the taking of testimony, the Clerk of the House received a letter dated March 4, 1939, by the contestant, Emory F. Smith, withdrawing the contest and asking that it be dismissed. This notice of withdrawal will be transmitted to the committee on elections to which this case shall be referred.

Yours respectfully,

SOUTH TRIMBLE,
Clerk of the House of Representatives.

MARCH 11, 1939.

HON. EMORY F. SMITH,
Portsmouth, Ohio.

DEAR MR. SMITH: Receipt is acknowledged of your letter of March 4, in which you give notice of withdrawal of your intention to contest the election of Hon. James G. Polk as a Representative-elect from the

Sixth Congressional District of the State of Ohio in the Seventy-sixth Congress.

This notice will be transmitted to the Speaker of the House of Representatives for disposal.

Very truly yours,

SOUTH TRIMBLE,
Clerk of the House of Representatives.

PORTSMOUTH, OHIO, March 4, 1939.

Hon. SOUTH TRIMBLE,
Clerk of the House of Representatives,
Washington, D. C.

DEAR MR. TRIMBLE: At the last general election in Ohio, held on November 8, 1938, James G. Polk was the Democrat candidate and I was the Republican candidate for the office of Representative in Congress, from the Sixth Congressional District of Ohio, composing six counties.

The official returns, as canvassed and certified by the Board of Elections of Scioto County, to the secretary of state of Ohio, showed that in the 6 counties Mr. Polk received 43,646 votes and I received 42,847 votes. The announcement of this result of the election in the 6 counties was made on the 22d day of November 1938. On the same day the secretary of state of Ohio issued to Mr. Polk a certificate of election which was duly signed by himself and the Governor of Ohio.

On the next day I filed a petition in the Supreme Court of Ohio, under sections 4785-166 to 4785-174, inclusive, of the General Code of Ohio, and in substance alleged therein that I received the greater number of valid votes in the whole congressional district and asked the court to cancel the certificate of election of Mr. Polk and issue one to me.

In Pike County, one of the counties of the Sixth Congressional District of Ohio, the returns of the board of elections of that county showed that Mr. Polk received 5,367 votes and I received 2,641 votes.

I further alleged in the petition, in substance and effect, that the canvass and certification of the board of elections of that county did not represent the number of valid votes cast by Mr. Polk or myself; that the election in that county had not been conducted in accordance with the statutes of Ohio; and that by eliminating and not counting such fraudulent and illegal votes cast for Mr. Polk, I received the greater number of legal votes in the district and should be declared duly elected to this office.

A demurrer was filed to this petition wherein it was contended, in substance and effect, that the sections of the General Code of Ohio under which this petition was filed were invalid, in that they contravened sections 1 and 5 of article I of the Constitution of the United States, which provides in part:

All legislative power shall be vested in a Congress of the United States which shall consist of a Senate and House of Representatives—

And—

Each House shall be the judge of the elections, returns, and qualifications of its own Members.

The demurrer was sustained upon these grounds, and my petition was dismissed.

A few days after filing the petition in the supreme court I filed with Mr. Polk a notice of contest as authorized and provided in the Federal statutes. Depositions in support of my contentions of the invalidity of the election and fraudulent voting in Pike County, which were cast in favor of my opponent, were not filed with you for the reason that I awaited the decision of the Ohio Supreme Court on this demurrer.

The Supreme Court of Ohio sustained the demurrer and dismissed the petition on February 8, 1939.

At the time of filing the action in the Supreme Court of Ohio I felt that it had jurisdiction to determine the questions involved and that in it or in any court of jurisdiction I could show sufficient irregularities, fraud, and illegality to warrant the court in declaring that I received the greater number of valid votes and that I was, in fact, elected to this office.

Since the committee on elections in the lower House of Congress is composed of more than a majority of members of the opposite party, the fact that such committee is not a judicial body and that it would entail a tremendous expense to take depositions of hundreds of necessary witnesses and the introduction of hundreds of papers in evidence, I have decided to withdraw and dismiss the notice of contest.

I do, therefore, for the reasons mentioned above, hereby withdraw and dismiss the notice of contest given by me to Hon. James G. Polk, Representative to Congress from the Sixth Congressional District of Ohio, and authorize you to take such steps or action which might be necessary to fully terminate the same.

Yours very truly,

EMORY F. SMITH.

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